DOCUMENT RESUME

ED 173 978 EC 114 938

AUTHOR	Moore, Jean J.; Mason, Doris M.
TITLE	Information Packet on Surrogate Parents.
INSTITUTION	Southwest Regional Resource Center, Salt Lake City, Utah.
SPONS AGENCY	Bureau of Education for the Handicapped (DHEW/OE), Washington, D.C.
PUB DATE	Apr 78
CONTRACT	300-78-0016
NOTE	51p.
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Child Advocacy; *Civil Liberties; *Federal Legislation; *Handicapped Children; *Parent Role
IDENTIFIERS	Education for All Handicapped Children Act; *Surrogate Parents

ABSTRACT

The information packet focuses on the role of the surrogate parent with emphasis on the rights of the handicapped child as mandated by P.L. 94-142, the Education for All Handicapped Children Act. Included are the following: a discussion of 10 surrogate parent issues identified through a literature search and survey of five states (Connecticut, Illinois, Iowa, New Jersey, and Pennsylvania); a matrix, which lays out in abbreviated form, the information elicited from the five states; a report of the conversation with New Jersey's special projects consultant; a memo requesting clarification on surrogate parent issues, prepared by a Southwest Regional Resource Center staff member; "Arming the Parent Surrogate," a training resource; excerpts from state guidelines or procedures for appointing surrogate parents from Ohio, Pennsylvania, and Utah; and copies of "Legal Background for the Surrogate Parent Program" by J. Cremins, "Connecticut's Surrogate Parent Program," "Ralph is a Special Child" (a surrogate parent recruitment brochure from the Pennsylvania Department of Education), "94-142 and 504: Numbers that Add Up to Educational Rights for Handicapped Children--A Guide for Parents and Advocates" by the Children's Defense Fund, and "The Surrogate Parent Program" (a bilingual recruitment brochure from the Connecticut State Department of Education). (SBH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED173978

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Information Packet

on

Surrogate Parents

Jean J. Moore
Program Specialist, Publications

Doris M. Mason
Research Assistant

April, 1978

H. Wayne Johnson, Director
Southwest Regional Resource Center

Department of Special Education
University of Utah
Salt Lake City, Utah 84112

Bureau of Education for the Handicapped
Office of Education
U.S. Department of Health, Education and Welfare

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Jean J. Moore

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EC111938

OE Contract No. OEC-300-78-0016

The work reported herein was performed pursuant to a contract with the Office of Education, U.S. Department of Health, Education and Welfare. Contractors undertaking such projects under government sponsorship are encouraged to express freely their professional judgment in the conduct of the project. Points of view or opinions stated do not, therefore, necessarily represent Office of Education position or policy.

U.S. Department of Health, Education and Welfare
Office of Education
Bureau of Education for the Handicapped

Introduction

Information Packet on Surrogate Parents

Public Law 94-142 (The Education of All Handicapped Children Act) provides safeguards to assure the rights of the handicapped child by requiring prior notice to the child's parents whenever the school proposes to initiate or change, or refuses to initiate or change, the child's identification, evaluation or placement, or the provision of a free, appropriate public education. For the child whose parent or guardian is unknown or unavailable, or for the child who is a ward of the state, PL 94-142 calls for the appointment of a surrogate parent to act in behalf of the child in fulfilling the parental role in the educational decision-making process. The surrogate parent would give signed consent prior to the preplacement evaluation and prior to the initial placement of the child in special education, and would participate in the individualized education program (IEP) meetings. Should the surrogate feel that the school was not providing an appropriate educational program to meet the child's needs, he or she could, as if the child were the surrogate's own, initiate an impartial due process hearing on behalf of the child.

The issues of the appointment of surrogate parents and of identifying which children need surrogates have generally been assigned a lower priority than have other, more pressing, requirements mandated by PL 94-142. Consequently, many states are only now beginning to deal with the complexities surrounding the surrogate parent issue.

The information in this packet was gathered from several sources, and was developed in response to a need expressed by the State Directors of Special Education in the Southwest Region (Arizona, Colorado, Nevada, New Mexico, Utah, and the Bureau of Indian Affairs schools). Several types of information is contained herein to aid the Southwest states in their various stages of implementation or refinement of procedures. Included are:

> A discussion of ten surrogate parent issues; the issues were identified through a literature search and five states were surveyed to ascertain their current procedures;
>
> A matrix, which lays out in abbreviated form the information elicited from the five states;
>
> A report of the conversation with New Jersey's Special Projects Consultant (New Jersey has been a frontrunner in advocacy training, and the conversation provides more detailed information about this state's procedures);

A memo requesting clarification on surrogate parent issues, prepared by a Southwest Regional Resource Center staff member;

"Arming the Parent Surrogate," a training resource developed by two University of Washington professors;

Excerpts from state guidelines or procedures for appointing surrogate parents from Ohio, Pennsylvania and Utah;

Copies of the following documents, which are available from the SRRC only to the State Directors of Special Education in the Southwest Region:

Legal Background for the Surrogate Parent Program, by James J. Cremins;

Connecticut's Surrogate Parent Program;

Ralph is a Special Child, surrogate parent recruitment brochure from the Pennsylvania Department of Education;

94-142 and 504: Numbers that Add Up to Educational Rights for Handicapped Children--A Guide for Parents and Advocates. Children's Defense Fund;

The Surrogate Parent Program, bilingual recruitment brochure, Connecticut State Department of Education.

Two other resources, which are readily available to most special education administrators, provide additional information on surrogate parents (both, however, precede the final rules and reuglations for PL 94-142). They are: Functions of the Placement Committee in Special Education: A Resource Manual, from the National Association of State Directors of Special Education; and A Primer on Due Process: Education Decisions for Handicapped Children, from the Council for Exceptional Children. The page numbers for the pertinent sections are found in the References section of this book.

§ 121a.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 121a.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415.)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 121a.514 Surrogate parents.

(a) *General.* Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in § 121a.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B).)

SURROGATE PARENTS (§ 121a.514)

Comment: Commenters requested that the regulations clarify when surrogates may be appointed. One reason given was to insure that agencies do not attempt to appoint surrogates when parents are uncooperative or nonresponsive.

Response: The section has been revised to make it clear that the requirements for appointing surrogates apply only when no parent can be identified, the agency after reasonable efforts cannot discover the whereabouts of a parent, or the child is a ward of the State. Agencies are not allowed to appoint surrogates when parents are uncooperative or nonresponsive.

Comment: Commenters requested that the regulations further specify procedures to be used for the appointment of surrogates, including administrative proceedings with notice to interested parties and the right of interested parties to seek a review of the decision.

Response: No change has been made. State procedures for the appointment of surrogates will be followed. Disagreements about the choice of surrogates may be the subject of a due process hearing under section 121a.506.

Comment: A number of commenters suggested that the regulations provide more detail about the qualifications of the surrogates (for example, requiring training and a commitment to becoming acquainted with the child).

Response: No change has been made. The Office of Education believes these concerns are covered by section 121a.514(c)(2) which requires that the surrogate have knowledge and skills that insure adequate representation of the child.

Comment: A number of commenters were concerned about the legal liability of surrogates. Some commenters wanted the regulations to protect surrogates from any legal liability.

Response: No change has been made. The legal liability of surrogates will be determined under State law relating to such matters as breach of fiduciary duty, negligence, and conflict of interest. The Federal government has no authority to limit legal liability.

Comment: A number of commenters sought clarification regarding which agency employees could serve as surrogates. For example, one commenter wanted the regulations to indicate whether the head of a State institution could serve as the surrogate.

Response: The regulation has been reworded to make it clear that no employee of any agency involved in the education or care of the child may serve as the surrogate parent.

§ 121a.504 Prior notice; parental consent.

(a) *Notice.* **Written notice which meets the requirements under § 121a.505 must be given to the parents of a handicapped child a reasonable time before the public agency:**

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* **(1) Parental consent must be obtained before:**

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* **(1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.**

(2) (i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 121a.506–121a.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 121a.510—121a.513.

(20 U.S.C. 1415(b)(1) (C), (D).)

Comment. **1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualised education program requirements in Subpart C.**

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions and the parent has appeal rights as well as rights at the hearing itself.

Table of Contents

Introduction i

Final Rules and Regulations Excerpts iii

Discussion of Several Surrogate Parent Issues 1

Matrix of State Responses 7

Summary, Conversation with New Jersey 9

Request for Position Paper for Clarification 13

Arming the Surrogate Parent 15

Excerpts, State Procedures

Ohio 31

Pennsylvania 35

Utah 41

References 45

The following documents (available from the Southwest Regional Resource Center only to the State Directors of Special Education in the Region):

Legal Background for the Surrogate Parent Program. James J. Cremins. Division of Special Education and Rehabilitation. Boston College. (no date)

Connecticut's Surrogate Parent Program. Connecticut State Department of Education, Bureau of Pupil Personnel/Special Educational Services. Hartford. July, 1976.

Ralph is a Special Child. Recruitment brochure. Bureau of Special Education, Pennsylvania Department of Education. Harrisburg, Pennsylvania. 1978.

94-142 and 504: Numbers that Add Up to Educational Rights for Handicapped Children: A Guide for Parents and Advocates. Children's National Defense Fund, Washington, D.C. 1978.

The Surrogate Parent Program. Bilingual recruitment brochure. Connecticut State Department of Education, Bureau of Pupil Personnel and Special Educational Services. Hartford. (no date)

Discussion of Several Surrogate Parent Issues

Issue 1: How are surrogate parents selected or recruited?

The law states that "the public agency may select a surrogate parent in any way permitted under state law." Accordingly, the process varies from state to state. In some states the state educational agency (SEA) develops and prints a brochure which is then given to the local educational agency (LEA) to distribute to parent and teacher associations and to other school groups. One state conducted a statewide canvass. In another, the state advisory council recruited by word-of-mouth. Other states permit the LEAs to use any method which is most effective for them, and still others have not addressed the situation. After the initial recruitment, states vary in the actual surrogate selection process. Some require training and a further commitment, while others first consider whether the volunteer is compatible with the child needing services before training is provided.

Issue 2: Who appoints surrogate parents?

The law states that "the duty of the public agency ... includes the assignment of an individual to act as a surrogate for the parents. This must include a method ... for assigning a surrogate parent to the child." The only restriction is that it must be allowed under State law. The process of appointing surrogate parents, therefore, also varies widely from state to state. The state, the intermediate or the local educational agencies appoint surrogates in various states, while in others the state advisory council, in conjunction with the state department of education, is assigned this task. In still other states, the juvenile court, through existing social service systems, appoints foster parents, legal guardians and, now, surrogate parents.

Issue 3: What is the incentive for serving?

The only sentence in the law which applies to this is the provision which states: "...that a person who otherwise qualifies to be a surrogate parent ... is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent." Again states vary in their practice. Some states feel it is detrimental to the quality of the surrogate program if they pay for the volunteers' services; other reimburse expenses; some reimburse expenses and pay per diem; others pay an hourly rate or an annual salary.

Issue 4: How are surrogate parents trained?

The law states that "the public agencies shall insure that a person selected as a surrogate: ... Has knowledge and skills, that insure adequate representation of the child." The law also outlines the responsibilities as follows: "The surrogate parent may represent the child in all matters relating to: (1) The identification, evaluation, and educational placement of the child, and (2) The provision of a free appropriate public education to the child."

Since there are no other guidelines, the procedure of "insuring" that the surrogate has adequate knowledge and skills varies widely from state to state. Some states do not train; rather they carefully screen and select people who already have adequate backgrounds; some states have a training program for candidates who want to be either a hearing officer or a surrogate parent; other states run a training program planned specifically for surrogate parents. New Jersey has a training program which is for advocates in general; graduates of this program are eligible to apply for further training as surrogates.

Issue 5: Are surrogate parents protected from liability?

In the analysis of the Final Rules and Regulations in PL 94-142, the following response to this concern was made: "The legal liability of surrogates will be determined under State laws relating to such matters as breach of fiduciary duty, negligence, and conflict of interest. The Federal government has no authority to limit legal liability" (p. 42512, col. 3).

The legitimacy of this concern is questioned by some states which feel that since surrogate parents do not make any legal decisions, they are in a no-risk position. Other states maintain that current laws covering "good Samaritans" or reporters of child abuse are sufficient to protect surrogate parents. Other states claim that the surrogate parent would be protected by the same laws that protect any employee of an education agency; that during the time people are acting within the prescribed role of surrogate parents, they are covered by the law. One state points out that natural parents may be held liable for negligence or abuse which would certainly apply to surrogate parents as well. However, some states are currently working on specific legislation to cover liability of the surrogate parent. Connecticut has enacted such legislation; the section in the law covering liability follows:

Sec. 4 (NEW) The surrogate parent of any child appointed pursuant to Section 3[1] of this act shall have the same right of access as the natural parents or guardian to all records concerning the child, including, but not limited to, educational, medical, psychological and welfare records. No surrogate parent appointed pursuant to the provisions of said Section 3 shall be liable to the child entrusted to him or the parents or guardian of such child for any civil damages which result from acts or omissions of such surrogate parent which constitute ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful or wanton negligence.[2]

Issue 6: What is the length of service required for a surrogate parent?

The law leaves all details of implementation to the states, and the practice varies accordingly. New Jersey has implemented a plan which provides long-term surrogate parents for the more severely involved cases and short-term services for the cases requiring specific input at a one-time hearing. Other states vary from "as long as needed" to the duration of a specific hearing.

Issue 7: What is the caseload required for a surrogate parent?

Again the law permits states to establish the guidelines. In many states where volunteers are used, the ideal caseload is one at a time. However, in states such as New Jersey, which use long-term and short-term surrogates, the caseload varies according to severity of handicap of the child being represented by the surrogate parent. Surrogates hired to handle severely involved cases are expected to carry larger caseloads than are volunteers who handle less involved cases.

---

[1]Section 3 details the juvenile court procedure for appointing surrogate parents; such appointments are effective until the child reaches 18 years-of-age, and may be extended until the child graduates from high school, or reaches the age of 21.

[2]State of Connecticut. P.A. 76-429, An Act Concerning Surrogate Parents. Included in Connecticut's Surrogate Parent Program, July, 1976.

Issue 8: Who monitors surrogate parents? Is there a method of replacing an ineffective surrogate parent?

The monitoring concept is only inferred by the law when it says that "public agencies shall insure ..." certain things. The states vary as to which agency is responsible for this task, from various agencies of the state education system to the department of social service..

Issue 9: What is the estimate of the number of children in each state who will actually need a surrogate parent?

The law defines the child who needs representation by a surrogate parent as being when "(1) No parent (as defined in §121a.10) can be identified; (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The child is a ward of the State under the laws of that State." A compounding phrase in the law concerns the nonemployee requirement for people serving as surrogate parents.

In states where the head of an institution is also the legal guardian for residents who are not represented by a parent, serious questions arise, and this issue is probably the most volatile of all issues surrounding the surrogate parent provision. Some states maintain that since the head of the institution is the legal guardian, the section of the law concerning when a child needs surrogate parents does not apply, because the child has a legal guardian. If this interpretation is correct, these states will need surrogate parent services for relatively few children; if it is incorrect, several hundred children need surrogates. Other states maintain that children who are not represented by a natural parent cannot be represented by an employee of the state agency providing services to the child, even the head of an institution who has been appointed legal guardian of the children.

Issue 10: Do institutionalized children need surrogate parents or is the head of an institution a legal guardian?

As discussed in Issue 9, this varies from state to state. For example, Connecticut state law prohibits the head of the institution from being the legal guardian, and Iowa state law names the head of the institution as the legal guardian. PL 94-142 provides for the appointment of surrogate parents for educational decision-making; institutionalized children and youth may need protective figures for other types of decision-making concerning their daily lives and future potentials. Some concern is voiced that a child may find himself with a covey of legal advocates, which, overall, maynot be in the child's best interest, and which will be more expensive. Yet PL 94-142 rules and regulations state that "A person assigned as a surrogate may not be

an employee of a public agency which is involved in the education or care of the child."

As stated earlier, in many states implementation of surrogate parent provisions has given way to more immediate concerns, as SEAs and LEAs have geared up to meet the intent and scope of P.L. 94-142. However, this issue holds the potential of being one that will become increasingly important as a free, appropriate public education is made available to all handicapped children and youth.

STATE / QUESTION	CONNECTICUT	ILLINOIS	IOWA	NEW JERSEY	PENNSYLVANIA
	Robert I. Margolin Connecticut Bureau of Pupil Personnel & Special Education, Hartford, Conn.	John Straus Educational Specialist Illinois Dept. Sp. Ed. Springfield, Ill.	John Lanham, Chief Title VI-B, EHA Division of Sp.Ed. IDPI Des Moines, Iowa	Charles Murray, Consultant, Special Projects, Bureau of Sp.Ed. and Pupil Personnel, Trenton, New Jersey	Linda O'Connor Asst. Right to Ed. Bureau of Sp. Ed. PSDE Harrisburg, Penn.
1. How are surrogate parents selected or recruited?	Volunteers recruited mainly by word-of-mouth from professional and parent groups; then screened before being appointed surrogate.	In 1976, canvassed state for surrogates and hearing officers. Trained approximately 60.	Existing state laws govern foster care and legal guardians for wards of the court. These same people are considered legal surrogate parents.	Volunteers recruited through parent organizations. Candidates selected after completing required training program.	State Department distributes fliers to districts, parent groups, school groups.
2. Who appoints surrogate parents?	Juvenile Court appoints, based on recommendations of Dept. of Education.	State Superintendent of Education	Court-appointed or determined through Department of Social Services.	Department of Education assigns from roster of volunteers who have met qualification requirements.	The intermediate educational unit appoints surrogate parents.
3. What is the incentive for serving?	Desire to be a surrogate. There is no honorarium. Expenses can be reimbursed.	Per diem plus expenses such as travel, telephone, etc. are reimbursed.	Remuneration according to existing policies & procedures because surrogates are appt. under existing law.	Surrogates serving severely involved are salaried. Volunteers from roster are reimbursed expenses.	Desire to be surrogate. Use unpaid volunteers.
4. How are surrogate parents trained?	Training program for surrogate parents in place. [Training manual included.]	No current training for surrogate. However there is training for hearing officers who may be called to be surrogates.	They are not trained. Rather, in accord with Iowa law, they are carefully screened before selection.	All potential candidates attend advocate training; those desiring to be surrogates attend further training, and ongoing inservice.	The intermediate unit is responsible. However, the state requires certain items to be included in training.
5. Are surrogate parents protected from liability?	Yes, to a point. [See text for Conn. law.]	Only through existing state laws which cover "good Samaritans" and teachers who report child abuse.	The same as any guardian or foster parent.	New Jersey does not consider this a problem since all legal decisions are made by other people.	Pennsylvania is currently developing such legislation.

STATE / QUESTION	CONNECTICUT	ILLINOIS	IOWA	NEW JERSEY	PENNSYLVANIA
	Robert I. Margolin Connecticut Bureau of Pupil Personnel & Special Education, Hartford, Conn.	John Straus Educational Specialist Illinois Dept. Sp. Ed. Springfield, Ill.	John Lanham, Chief Title VI-B, EHA Division of Sp.Ed. IDPI Des Moines, Iowa	Charles Murray, Consultant, Special Projects, Bureau of Sp.Ed. and Pupil Personnel, Trenton, New Jersey	Linda O'Connor Asst. Right to Ed. Bureau of Sp. Ed. PSDE Harrisburg, Penn.
6. What is the length of service required for surrogate parents?	As long as needed. There will be a yearly review of the surrogate parent's performance.	As long as needed.	They are to serve as long as needed.	Depends on severity of cases. Surrogate serving severely involved are hired on annual basis. Volunteers serve on length of case.	Each surrogate parent is appointed for one year; can be reappointed for another year.
7. What is the caseload required for a surrogate parent?	Ideally one-to-one basis. Realistically this may not be possible. However state plans to hold to small caseload.	One-to-one basis.	Dependent on many variables. The general caseload would be one or two children.	Depends on severity of cases. Surrogate serving severely involved expected to carry larger case load.	One-to-one basis.
8. Who monitors surrogate parents?	Joint activity of State Advisory Council on Special Education and State Department of Education.	State Department of Special Education	The Department of Social Services	The surrogate who is hired is expected to do his job. Rostered volunteers will not be recalled if quality of service is poor.	The intermediate units are responsible for monitoring.
9. What is an estimate of the number of children in your state needing a surrogate parent?	Possibly 200 if the institutionalized children are served.	No current estimate.	No current estimate.	Because institutionalized children must be included, will be about 1,000.	Possibly 400; this is a rough estimate.
10. Do institutionalized children need surrogate parents or is head of institution a legal guardian?	Under Connecticut law the head of the institution cannot be the legal guardian.	Not being considered at this point. LEAs responsibility to request surrogate.	The head of the institution is the legal guardian.	Volunteers, under Div. of Youth and Family Services, serve as surrogates.	Pennsylvania does not see the head of the institution as the legal guardian.

Summary of Telephone Interview with Dr. Charles Murray, Consultant, Special Projects, Branch of Special Education and Pupil Personnel Services, Trenton, New Jersey 08625

General Comments:

New Jersey had advocacy training prior to PL 94-142. The process consisted of training parents and professionals in program options, information about community agencies. and New Jersey and federal statutes, rules and regulations.

How Are Parent Surrogates Selected Or Recruited?

In the State of New Jersey, three types of surrogates are appointed, depending upon the depth of involvement required or the category of handicapped child involved. The three levels are:

a) The surrogate who serves the seriously involved child is obtained through a nonstudent-serving local school district. This type of district is responsible for technical assistance to public and private agencies, LEAs and professional personnel. This type of district does not provide direct service to students; therefore a surrogate may be made available without the conflict-of-interest issue being raised. The type of child who requires ongoing surrogate services comes from a population of children who have been removed from the home due to severe mental or physical problems, or neglect or abuse by parents.

b) The surrogate who serves the developmentally disabled child is provided through the Developmental Disabilities Council. In New Jersey these guardians, located on a county basis, serve the autistic, mentally retarded and other developmentally disabled children. These surrogates are funded separately and are under the Developmental Disabilities Council rather than the Department of Education.

c) Surrogate services for children needing short-term assistance are provided through the use of volunteers. These volunteers are generally affiliated with parent agencies and organizations, although members of the general public may also volunteer. The volunteers participate in advocacy training offered by the New Jersey Department of Education at its four regional, nonstudent-serving LEAs. Advocacy participants interested in becoming surrogates may apply, and additional training will be provided in order to develop a roster of volunteer surrogate parents. Ongoing interactional seminars are held for all rostered surrogates to discuss common problems and to keep abreast of significant developments in the areas of special education and due process.

Who Appoints Surrogate Parents?

The Department of Education assigns surrogate parents from the roster of volunteers for those children whose parents have been incarcerated or are unavailable, or for those children who have been removed from the home.

If a child is developmentally disabled, a surrogate is assigned through a county based project sponsored by the Developmental Disabilities Council.

In the case of a severely involved child or in case of extreme due process complications, a surrogate located at a nonstudent-serving LEA will handle the case.

What Is The Incentive For Serving?

a) The surrogates who are employed by the nonstudent-serving local school districts are hired on an annual basis and paid a salary comparable to that paid a master level special education teacher.

b) The surrogate who serves the developmentally disabled child falls under the procedures of the Developmental Disabilities Council through a county based, parent agency.

c) The surrogates who are serving the short-term cases are volunteers who are reimbursed for expenses incurred. Many volunteers are members of parent organizations.

How Are Surrogate Parents Trained?

All potential surrogate parents are first trained to be an advocate by the Department of Education. Those wishing to become surrogates are being trained in specifics relating to New Jersey Statutes, Rules and Regulations of P.L. 94-142, procedural safeguards, the IEP, and other relevant information. Ongoing inservice is provided for those on the roster of active surrogates. These same training components are available to surrogates sponsored through the Developmental Disabilities Council.

Are Surrogate Parents Protected From Liability?

New Jersey does not see liability as a problem since the surrogate parent does not make any legal decisions for a child. The surrogate is responsible for insuring the child's educational rights. If a placement is viewed as improper, the surrogate will call for a mediation session with the local school district or state agency run by a Department of Education professional and located in a Department of Education county office; or call for an administrative review by one of the four Department of Education regional teams (the teams consist of an administrator, psychologist, social worker, and learning disabilities teacher-consultant); or for a hearing conducted by a Department of Education Hearing Officer.

What Is The Length Of Service Required For Surrogate Parents?

The length of service required of a surrogate parent depends upon the basis on which they are serving. The surrogate parents employed by the nonstudent-serving local school district and the Developmental Disabilities Council are hired on a long-term basis. The length of service required of the volunteers is short-term in nature.

What Is The Case Load Required Of A Surrogate Parent?

The surrogate who is an employee of the nonstudent-serving local school district or the Developmental Disabilities Council is expected to carry a large case load. The volunteers are expected to handle only one case at a time.

Who Monitors Parent Surrogates?

The surrogate employed by the nonstudent-serving local school district is expected to perform his job functions and will be evaluated as an employee of that district. The volunteers who are chosen from the roster will not be selected for service if their actual performance is found to be unsatisfactory by the Department of Education. The Branch of Special Education has no control over the project staff funded through the Developmental Disabilities Council at the county or local levels.

What Is Your Estimate Of The Number Of Children In Your State Who Will Actually Need A Surrogate Parent?

Approximately 3-5 children need surrogate parents.

Do Institutionalized Children Need Surrogate Parents Or Is The Head Of The Institution The Legal Guardian?

These children are wards of the state and the Division of Youth and Family Services is responsible. Volunteers are trained as surrogates for institutionalized children, because Division caseworkers carry a heavy caseload (sometimes up to 800 individuals whose ages range from birth to death).

THE UNIVERSITY OF UTAH
SOUTHWEST REGIONAL RESOURCE CENTER

2363 Foothill Drive, Suite G
Salt Lake City, Utah, 84109
Phone: 581-6261

M E M O R A N D U M

To:

From:

Subject: Request for position paper for clarification

The State of New Mexico finds a need for clarification, with a subsequent position paper to be issued by the addressee of this memorandum in regards to services to the handicapped; in particular, the issue of a surrogate parent to "protect" the rights of the handicapped for a free appropriate public education.

Issues:

1. What constitutes a reasonable effort to locate the parents of a handicapped child and who should be responsible for locating them?

2. What procedures should be involved in the selection and subsequent assignment of a surrogate parent to a particular handicapped child?

3. What training is required to have an individual qualify as a surrogate parent?

4. What protects the surrogate parent from:

   a. being an advocate for the school district and not truly representing the interest of the child;

   b. being liable for actions on behalf of the student when the parents are located and disagree with the decisions of the surrogate parent; and

   c. being dismissed as a surrogate parent when the surrogate disagrees with the action proposed or refused by the school?

Discussion:

The Office of Education did not delineate the responsibilities for the LEA or other public agency to locate the parents if they are not known. It is assumed that the LEA will make an effort to locate the parents and will not appoint a surrogate parent when the parents are uncooperative or nonresponsive. The regulations (§121a.514) make it clear that the requirements for appointing surrogates apply only when no parent can be identified, or the child is a ward of the State. One attorney (Dr. Reed Martin) has indicated that an adult acting as a parent can assume the authority of the parent. Dr. Martin states that the adult with whom the child is living could represent the interests of the child.

The Office of Education did not state what procedures/processes should be employed to assign a surrogate to a child or exactly what training the surrogates should receive. In regards to the training, the comment section of the regulations (page 42512) states ". . .section 121a.514(c)(2) which requires that the surrogate have knowledge and skills that insure adequate representation of the child." It also states in the regulations that the SEA is to develop procedures to assign surrogates and assure that they are being trained.

The analysis section of the regulations (page 42512) states ". . .The legal liability of surrogates will be determined under State law relating to such matters as breach of fiduciary duty, negligency, and conflict of interest. The Federal government has no authority to limit legal liability." Most states (e.g., Arizona and Penn.) are in the process of securing "court-appointed" surrogate parents. In the case of Arizona, the State Constitution holds that institutional agents can be surrogates, and that those who need surrogate parents shall have them appointed by the juvenile courts. Pennsylvania is requesting the state legislature to limit the liability of the surrogate parents; consequently, they are not taking any actions relative to surrogate parents until the legislation is passed.

Arming the Parent Surrogate

by

Eugene Edgar, Ph.D.
Associate Professor
College of Education
Experimental Education Unit
Child Development and Mental Retardation Center
University of Washington

and

Leonard A. Kenowitz, Ed.D.
Project Manager
Severely Handicapped Personnel Preparation Program
Experimental Education Unit
Child Development and Mental Retardation Center
College of Education
University of Washington

Reprinted and included here with the author's permission by the SRRC.

Arming the Parent Surrogate

Introduction

One of the innovative and exciting provisions of the new federal "education for all handicapped children" legislation, P.L. 94-142, is the provision concerning the appointment of surrogate parents to act on behalf of the handicapped child. The proposed rules and regulations implementing P.L. 94-142 specify that a surrogate parent shall be appointed to insure the protection of a child's rights "when the parent of a child is not known, unavailable, or the child is a ward of the state." The regulations also state that "The surrogate parent may represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child, and
2. The provision of a free appropriate public education to the child."

This new law, which goes into effect this September, will have a profound impact on handicapped children and their parents. It is possible that tens of thousands of children are eligible to receive an appointed parent surrogate. Our purpose in writing this brief paper is to alert the readers of the Exceptional Parent who might like to become surrogate parents to the necessary information one might need to be an educational advocate for handicapped children. Hence we will discuss "Arming" the parent surrogate. (For information on how to qualify for a surrogate parent appointment, contact your State Department of Education, Special Education Division.)

There are many complex issues surrounding the role of the parent surrogate, because it is a new, untried concept. There are many pieces of information that a good parent surrogate will need to be a child advocate. However, given that this is a new idea, and few, if any, states have developed procedures to train, appoint, deliver, and certify parent surrogates, we are providing information that we believe to be adequate in the incipient stages of parent surrogate development. We have based our paper on two information points: (1) A thorough reading and understanding of Federal law, and (2) on a recent workshop we conducted to train surrogate parents in Washington state.

A. Due Process

Every parent surrogate should have a clear understanding of the due process or procedural safeguards enumerated not only in P.L. 94-142 but also of those contained in each state's rules and regulations governing special education. Due process is a cornerstone protecting the rights of both parents and children in the educational process. Basically, the due process provisions are:

1. Parental rights to review and examine all school records of their children.
2. Parents have a right, if they disagree with the school district's evaluation, to an independent evaluation of their child.

3. Parents must be notified of any changes in the identification, evaluation, or educational placement of the child.
4. Parents must approve an evaluation of their child before it is conducted.
5. Parents have a right to an impartial due process hearing if they disagree with the school district in the provision of a free appropriate public education.
6. Parents have the right to seek civil action after exhausting all the procedures of an administrative appeal.

B. Confidentiality

The protection, or confidentiality, of records is important, and surrogate parents should be aware of it. Once again, P.L. 94-142 and individual state law provide the requisite information necessary for an informed surrogate parent. The surrogate parent has the right:

1. to review and inspect all information contained in a school report
2. to a reasonable or lay interpretation and explanation of that information
3. to obtain copies of the school records
4. to deny anyone, except for people providing an educational program to their child, access to such information
5. to amend or disclaim information they believe is inaccurate or violates the privacy of the child or the family

6. to an impartial hearing to challenge information in a child's permanent records

C. Knowledge of Handicapping Conditions

Surrogate parents, particularly those who have never previously worked with handicapped children, should be provided with information related to different handicapping conditions. This information might include a description of the handicapping condition, eligibility or classification criteria, prognosis, etc. A good place to research this knowledge is to review your state's eligibility criteria for special education placement.

D. Individual Education Plan

The most important work for the surrogate parent probably will be [the IEP] for their child. The individualized education plan (IEP) will be required for all children by September of 1977; it is basically a plan for providing educational services to handicapped children. In the following pages, we offer a simplified introduction to the IEP. In the far left column we list the requirements of the IEP; in the middle column we indicate where to look for that information; in the column on the far right we list questions you might want to ask when you are assisting in the development of your appointed child's IEP. If you did not participate in developing an IEP, these are questions you should ask the child's teacher concerning the development and implementation of the IEP.

IEP

INDIVIDUALIZED EDUCATION PROGRAM

Requirements	Where to look	Questions
I. Present level of functioning	Results of Assessment	1. What topics covered-reading, arithmetic, writing, motor, communication (speech and language), social, and self-help skills? 2. What was the date of latest information? 3. Is there information from more than one source? 4. Do you have knowledge of the child's ability?
II. Yearly Goals	Student Plan	1. Are they related to assessment information? 2. Given your knowledge of the child, are they appropriate?

III. Short-range instructional objectives	Student Plan	1. Do the objectives relate to the goals?
IV. Special media or materials	Student Plan	1. Are the special materials related to the objectives? 2. Could the child benefit from special equipment? 3. Does the special equipment prevent the child from interacting with non-handicapped peers?
V. Appropriate criteria for objectives and evaluation procedures for objectives	Student Plan	1. Could you tell if the child had mastered the objectives?
a. Procedures for re-evaluation of objectives	Student Plan	1. Have specific dates been established to re-evaluate the IEP? 2. Are there indications that the IEP has been evaluated within the last year?

VI. Description of all recommended auxiliary services (PT, speech, etc.)	Results of Assessment Student Plan	1. Have any recommendations been made for special services? 2. Are there services being provided? by whom? how often? Are there objectives and evaluation procedures?
VII. Initiation and Duration of Services	Student Record	1. When did all special services begin? 2. When is the date for re-evaluation of these services?
VIII. Physical Education/ Enrichment activities	Student Record	1. What are the enrichment opportunities for the non-handicapped in the district? 2. Does the child have equal opportunity to engage in these activities?
IX. Statement concerning integration with non-handicapped peers	Student Record Daily Schedule	1. Is there a statement concerning mainstreaming?

2. From the daily schedule, is there evidence of contact with the non-handicapped?

In the following section, we have indicated the steps you should take when working with the school district if you are not satisfied or do not understand the information contained within the IEP.

General Information to Request

1. All Diagnostic/Assessment Reports
2. Student Plan Sheet
3. Daily Class Schedule
4. Cumulative Folder

General Considerations

1. Meet with the child before you examine the records. Try to get a "feel" for his/her skill levels and his/her ideas about school.
2. The general idea of this entire process is to try to answer the question, "If this were my child would I be pleased with his/her school program?"
3. You have the law on your side, and if necessary you can demand your rights. However, start the process with the

assumption that the school is doing an excellent job. Ask all the questions you can think of, and request to see all the information, BUT don't put the school staff on the defensive. Ideally, all the required information will be available; however, this is a new process so it may take time for the school to produce all this information. Be patient, but do not accept less than is required by law or less than you would want if this were your child.

4. Check dates--do not accept old information. (Information should not be more than one year old.)
5. Check the daily schedule to determine if the plan is actually being implemented--this may require a classroom observation.
6. Do not hesitate to ask questions. Educators, especially special educators, tend to use jargon. Many professional educators do not clearly understand the meaning of some terms. If you do not understand the meaning of some terms, ASK for clarification; it is often good to ask for a demonstration of the concepts.
7. Some handicapped children need special equipment, and the diagnostic reports should indicate these special needs. If in doubt, you have the right to get consultation from experts, i.e., community health clinics, hospital staff, etc. It is virtually impossible to list all the special aids which might be required; however, the rules of thumb are:
   a. If there are visual problems, have attempts been made

to provide for this problem (recent eye examination, glasses, enlarged print material, braille)?

b. If there are auditory problems, has there been a recent audiological examination? Are sound amplification devices in use? Have these devices been recently checked? Is signing being used?

c. For physical problems, has an occupational or physical therapist been consulted? Is adaptive equipment in use?

The basic question is, Is the child receiving the best opportunities available for his/her education?

What to do if you are not satisfied with the School Program

In chronological order, these are the steps you should follow:

1. Meet with the child.
2. Meet with teacher--make an appointment and inform the teacher of your concerns. Request all the information that you will want to review beforehand.
3. If you are not completely satisfied, tell the teacher what information you want or what changes you think should be made. Write this down, date the copy, and give one copy to the teacher and keep one copy for yourself. Arrange to meet with the teacher again before you leave (two weeks is more than ample time for the teacher to respond to your requests).

4. Meet again with the teacher. If you are still not satisfied, request a meeting with the building principal, and inform the teacher of your plans. When arranging the meeting with the principal be sure to inform him of the purpose of your meeting. This is best done vocally and in writing. Arrange for this meeting as soon as possible.

5. If, after your meeting with the principal, you are still not satisfied, there are two options available. You may choose to give the principal time (no more than two weeks) to remedy the situation. Reschedule another meeting <u>before</u> you terminate the first meeting. Or, you may request a meeting with the Director of Special Education for the School District. If you choose to do this, inform the director, both vocally and in writing, of the purpose of the meeting. Schedule this meeting as soon as possible. <u>Keep dated copies of each written communication</u>.

6. If the meeting with the Director of Special Education does not produce results, there are still two options: another meeting with the director, or a meeting with his/her supervisor (usually an assistant superintendent for pupil personnel services). As always, offer both vocal and written notification of this meeting, and the reasons for the meeting.

7. If the meeting with the Assistant Superintendent is not satisfactory, then three procudures should be followed:

a. Request a hearing from the Superintendent of the school district.

b. Inform the Director of Special Education of your local Education Agency of your request.

c. Consult with an attorney.

Most special educators are truly concerned and committed to the most appropriate education of all handicapped children. In very few instances will the grievance procedure go beyond the local Director of Special Education. However, you have every right (and legal support) to go as far as formal hearing procedures and ultimately to civil action procedures in a court of law.

Procedural Time Line

ELAPSED SCHOOL DAYS	CONTACTS
0	Initial meeting with teacher
14	Follow-up meeting with teacher
16	Initial meeting with Principal
30	Follow-up meeting with Principal
32	Initial meeting with local Special Education Director
39	Initial meeting with District Superintendent
50	Formal Hearing

E. Back Home as a Surrogate

Finally, parent surrogates should arm themselves with a directory of resources to call upon should questions arise. A parent surrogate handbook should contain copies of P.L. 94-142 and the accompanying rules and regulations, state law and accompanying rules and regulations, the phone number of your local Association for Retarded Citizens, and the phone number of your State Department of Education. Closer Look, in Washington, D.C., is a valuable parent information resource, as are your local legal services council, the local chapter of the American Civil Liberties Union, and the county health clinic. An introductory book on special education might also prove helpful. You should always add to your file as appropriate information is gathered. (Most of the documents listed above are available from your State Department of Education, Special Services Division).

Try to form informal parent surrogate groups in your community to share ideas, exchange information, invite guest speakers, and discuss concerns. Remember: you can and should seek information from knowledgeable people, they are in the business to provide quality programs for handicapped children.

Conclusion

Being a surrogate parent will not be an easy job. It will take prodigious amounts of time and energy to be a good advocate for your appointed handicapped child. It will take information,

a knowledge of your legal rights, the ability to work with school personnel, assertiveness, and the ability to combine all these things to work on behalf of a child who you most probably have never met and will meet with infrequently. Being a surrogate parent is an important role, for many handicapped children have been abused, neglected, or inappropriately served without that adult advocate. We have endeavored to provide you with only the most basic of information; now it is up to you to know your rights and to seek new information. Good Luck.

STANDARDS
FOR
SPECIAL EDUCATION

Ohio Department of Education
Columbus, Ohio

Standards for Special Education
Ohio

Retyped from pages 75-76 of Ohio's Standards:

C. Parent Surrogates

1. General

Parent Surrogates: Due process and procedural safeguard policies and procedures shall include procedures to protect the rights of the child when the parents of the child are unknown or unavailable, or when the child is a ward of the state or when the child is without a formally declared legal representative. These policies and procedures shall include provisions to assure that:

a. When written permission is not forthcoming from the child's parent or legal guardian to being any of the evaluation processes, a written inquiry shall be sent to the adult in charge of the child's place of residence, as well as to the parents or legal guardian at their last known address. If these efforts find that the child is without a parent or guardian, or if it is otherwise known that they are unavailable, then a request for a parent surrogate will be filed with the superintendent of the school district.

b. Upon receipt of a request for a parent surrogate, the superintendent or his designated representative shall, within 30 days, utilize all available information to determine if the child is in need of a surrogate and shall assign one if such study so indicates.

c. The parent surrogate will be responsible for protecting the rights of the child through the complete decision making process including the appeals process, if that occurs, and the first review of the placement.

d. The parent surrogate shall not be an employee of the school district, state or local educational agency involved in the education or care of the child.

e. The school district or other educational agency, shall individually or in cooperation with other districts provide an information program for parent surrogates regarding their role and responsibilities.

f. A child who has reached the age of majority may request a parent surrogate when no parent is available.

g. To the extent possible, parent surrogates should match the child's cultural and linguistic background.

September 30, 1977

SUBJECT: **Implementation of Surrogate Parent Procedures by October 1, 1977**

TO: **School District Superintendents**
Intermediate Unit Executive Directors
Intermediate Unit Special Education Directors

FROM: **Gary J. Makuch, Director** Gary J. Makuch
Bureau of Special and Compensatory Education
Department of Education

This concerns implementation of the surrogate parent program. Students needing surrogate parents are handicapped persons who are receiving a free public program of education who are wards of the state or whose parents are unknown or unavailable.

The education amendments of 1974, Public Law 93-380, required all state education agencies to adopt a state plan that would include provision of adequate due process procedures. One of the requirements is the provision by the state of procedures to protect the rights of the child when the parent or guardian is unknown or unavailable, or when the child is a ward of the state. This includes the assignment of an individual to act as a surrogate parent. Public Law 94-142 (20 U.S.C. 1415 §615(b)) reinforced the requirement that surrogate parents be appointed when necessary.

As you may recall, a year ago we attempted to fully implement the surrogate parent program. Many concerns were voiced as to serious problems which would arise in the implementation of the surrogate parent program. One of the major concerns has been the liability of the surrogate parent in making educational decisions for the student.

We are attempting to develop legislation which would resolve this problem. We will notify you as soon as the legislation is passed. In the interim we must implement the surrogate parent program to the best of our abilities. You should advise potential surrogate parents that the question of liability has not been completely resolved.

Attached is an estimate of students served in intermediate unit programs who will need surrogate parents. This estimate was prepared by reviewing 1975-76 child accounting records.

A plan for "Surrogate Parent Procedures" was distributed in June 1976. This plan has been revised and is attached. This plan addresses the aspects of the identification of students, and the selection, assignment and training of surrogate parents.

The intermediate unit has the major responsibility for implementing the program. However, each school district will be required to supply certain information to their respective intermediate unit. The information which is required is outlined in the Plan for Implementation of the Surrogate Parent Program.

Send information of students needing surrogate parents and surrogate parent assignments to:

Surrogate Parent Program
Special Education Programs and Service Division
Pennsylvania Department of Education
Box 911
Harrisburg, PA 17126

Attachments

Plan for Implementation of Surrogate Parent Procedures

I. **Identification of Persons Needing Surrogate Parents**

A. Those needing surrogate parents are handicapped persons receiving a free public program of education in a public school, or assigned to an approved private school via DEBE 448 who are:

1. wards of the state, or

2. whose parent(s) or guardian is (are) unknown or unavailable. (This includes students who are school-aged and those who are pre-school-aged.)

B. Methods for identifying persons who may need surrogate parents.

1. Intermediate units will search records to identify persons who are as in 1.1. Such students will be reported on DEBE 345.

2. School districts will search records to identify persons who are as in 1.1. Such students will be reported on DEBE 483.

a. School districts will report such to their local intermediate unit.

C. Determination of students needing surrogate parents is to be made by intermediate unit.

D. Person acting as responsible (named on the court order) will be notified that the student needs a surrogate parent and the implications of such.

E. A system will operate to track persons needing surrogate parents.

1. Intermediate unit maintains and updates file of persons needing surrogate parents.

2. Intermediate unit forwards to Pennsylvania Department of Education a list of persons needing surrogate parents, which includes birthdate, address and current educational assignment.

a. Forward additional names of persons as identified.

b. Forward complete list annually. (October 1st of each year).

3. Pennsylvania Department of Education maintains and updates file of persons needing surrogate parents.

II. Selection of Persons to Serve as Surrogate Parents

A. Responsibilities

1. Act in place of a parent for the person concerning his/her educational program:

   a. Attend planning conference to develop an individualized education program.

   b. Be familiar with appropriate procedures for due process and confidentiality of records.

   c. Receive the notice(s) concerning evaluation and/or placement of the student.

2. Receive in-service training designed to:

   a. Familiarize the surrogate with the person, his/her handicap and current educational program.

   b. Familiarize the surrogate with educational programs provided by the school district and/or intermediate unit.

   c. Familiarize the surrogate with developing an IEP, the due process procedures and confidentiality of records.

3. Surrogate parents will be volunteers:

   a. Some travel expenses may be reimbursed.

B. Qualifications

1. Be a person of good character.

2. Be at least 18 years of age.

3. Possess reasonable abilities to make a decision on a student's educational needs.

4. Be committed to acquaint themselves with the person's educational needs and with Pennsylvania's educational system.

5. Have no vested interest that would conflict with the primary allegiance to the person they would represent. The surrogate parent may not be an employe of any agency responsible for the education or care of the child.

   a. Foster parents may be considered, so long as they are not proscribed under other sections of the plan.

C. Recruitment

1. The intermediate unit will recruit interested parties through:

   a. News media.

   b. Local task forces, advocacy organizations and colleges and universities.

   c. PTO's, PTA's, and other volunteer organizations, such as the League of Women Voters, fraternal and other organizations, such as Kiwanis, church groups, senior citizens, Jaycees, etc.

2. The intermediate unit will distribute responsibilities and qualifications to interested parties.

   a. Compile list of interested parties.

   b. Screen list for qualifications.

3. Executive Director receives list of interested persons who meet qualifications.

D. The intermediate unit will select persons to serve as surrogate parents.

1. List of persons who may serve as surrogate parents will be maintained and updated by intermediate unit.

III. Assignment

A. Intermediate unit will determine each assignment. Surrogate parents will be assigned on the basis of duration of time available, preference for handicap and distance between location of person and surrogate parent.

1. The intermediate unit will inform the handicapped person of assignment.

2. The intermediate unit will inform the proposed surrogate parent of the assignment; and of the name of the person or agency responsible for the student (listed on the court order).

3. The intermediate unit will inform the person or agency responsible of the assignment and of the name of the surrogate parent.

B. Intermediate unit will maintain and update file of assignments in accordance with guidelines on confidentiality.

1. List of assignments is forwarded to Pennsylvania Department of Education annually. (October 1st of each year).

C. Pennsylvania Department of Education will maintain and update file of assignments in accordance with guidelines on confidentiality.

IV. Training Surrogate Parents

A. Intermediate units are responsible for training surrogate parents.

B. Training will include:

1. Acquainting the surrogate parent with the student.

2. Description of the current educational program.

3. Identifying key people in the school system.

4. Familiarizing the surrogate with the procedures for IEP development and due process and confidentiality of records.

5. Familiarizing the surrogate with comparable educational programs provided by the school district and intermediate unit.

AMENDED ANNUAL PROGRAM PLAN FOR FY 1978

UNDER P.L. 94-142, PART B

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Submitted by:
UTAH STATE BOARD OF EDUCATION
250 East Fifth South Salt Lake City, Utah 84111

JULY 7, 1977

Amended Annual Program Plan for FY 1978
Utah

Excerpted from Utah's origram plan; page numbers indicated following quotes.

VII. PROCEDURAL SAFEGUARDS (612(5)(A), 615)

Section 612(5)(A) states that in order to receive assistance under Part B, a State must demonstrate that it "has established procedural safeguards as required by section 615" of the Act.

Following are the policies adopted by this SEA for insuring that handicapped children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children.

A. Due Process Guarantees. The following due process procedures have been adopted by this SEA to comply with Section 612(5)(A), 615 of P.L. 94-142.

Definitions

"Surrogate Parent" -- means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or treatment of children. The function of the surrogate parent will be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest. (p.29)

Due Process Guarantees...(continued)

4. Procedures for Assigning Surrogates. Assignment of a surrogate to a particular child shall be made within 15 days of the child's eligibility determination according to the following procedures:

a. Any person whose work involves education or treatment of children who knows of a child possibly needing special education services and knows that the parents or guardians are not known, unavailable, or that the child is a ward of the State, should file a request for assignment of a surrogate to the child with the child's LEA.

b. In an effort to determine whether or not the parents or guardians are in fact unknown, unavailable, or the child is a ward of the State, the LEA should send

a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.

c. The LEA should confer with the local unit of the State Division of Family Services in determining whether or not the parents or guardians are unknown, unavailable, or the child is a ward of the State. This determination should be completed within a reasonable time. If it is determined that there is a need for a surrogate, such assignment should be completed within 15 days. (p.36)

5. Surrogate Parents. In order to provide every child eligible a public education with the protection of procedural due process, even under circumstances where a child's parent or guardians are not known, are unavailable, or the child is a ward of the State, each child shall be assigned a parent surrogate. The LEA in cooperation with the local unit of the State Division of Family Services shall maintain a registry of eligible persons who can serve as surrogate parents.

   a. Qualifications of Surrogates. Persons selected as surrogates should (1) have no vested interest that would conflict with their primary allegiance to the child they would represent; and (2) to the extent possible be of the same racial, cultural, linguistic and geographic background of the children they represent.

   b. A surrogate will be committed to acquaint themselves, personally and thoroughly, with the child and the child's educational needs; and be familiar with the state and local educational system.

   c. Surrogate parents will not be an employee of the State or local education agency. (p.37)

References

California Office of Special Education. Personal communication with Dr. Eunice Cox, Consultant, Sacramento, CA., April 21, 1978.

Children's Defense Fund. 94-142 and 504: Numbers that Add Up to Educational Rights for Handicapped Children--A Guide for Parents and Advocates. Washington, D.C.: 1978, pp. 46-47.

Connecticut State Department of Education. "Connecticut's Surrogate Parent Program." Hartford, Connecticut: Connecticut State Board of Education, July 1976.

Connecticut State Department of Education. Bureau of Pupil Personnel & Special Education Services. Personal communication with Robert Margolin, Chief, Hartford, Connecticut, April 17, 1978.

Connecticut State Department of Education. Bureau of Pupil Personnel & Special Education Services. PL 93-380. PA 76-429, The Surrogate Parent Program (bilingual brochure), Hartford, Connecticut, (no date).

Council for Exception Children. A Primer on Due Process: Education Decisions for Handicapped Children. Reston, Virginia: CEC., 1975, pp. 37-43 ("The Parent Surrogate: One Approach") and flow chart for surrogate parent process.

Cremins, James J. "Legal Background for the Surrogate Parent Program." Newton, Mass.: Division of Special Education and Rehabilitation of Boston College, (no date).

Edgar, Eugene and Kenowitz, Leonard. "Arming the Parent Surrogate." Seattle: Experimental Education Unit, University of Washington, (no date).

Holt, George. "Request for Position Paper for Clarification." Salt Lake City, Utah: Southwest Regional Resource Center, 1978.

Illinois Department of Special Education. Personal communication with John Straus, Specialist, Springfield, Illinois, April 17, 1978.

Iowa Division of Special Education. Personal communication with John Lanham, Chief, Title VI-B, Education of Handicapped Act. Des Moines, Iowa, April 17, 1978

Massachusetts Bureau of Special Education Appeals. Personal Communication with Carol Kervick, Director of BSEA. Boston, Mass., April 4, 1978.

Michigan Department of Education. Personal communication with John Braccio, Supervisor of Compliance and Approval/Special Education Services. Michigan Department of Education, Lansing, Michigan, April 21, 1978.

National Association of State Directors of Special Education, "Appendix D: Due Process" Functions of the Placement Committee in Special Education: A Resource Manual, Washington, D.C.: NASDSE, 1976, pp. 93-94.

New Jersey Branch of Special Education and Pupil Personnel Services. Personal communication with Dr. Charles Murray, Consultant, Special Projects, Trenton, New Jersey, April 26, 1978.

Ohio Division of Special Education. Personal communication with S.J. Bonham, Jr., Director of Division of Special Education. Worthington, Ohio: Ohio Department of Education, April 13, 1978.

Pennsylvania Bureau of Special and Compensatory Education. "Implementation of Surrogate Parent Procedures by October 1, 1977," by Gary J. Makuch, Director of Bureau of Special and Compensatory Education, Harrisburg, Pennsylvania: Department of Education, September 30, 1977.

Pennsylvania Bureau of Special Education. Personal communication with Linda O'Connor, Assistant Right to Education, Harrisburg, Pennsylvania: Department of Education, April 13, 1978.

Pennsylvania Bureau of Special Education. "Ralph Is A Special Child," Harrisburg, Pennsylvania: Department of Education, 1978, brochure.

Public Law 94-142, Education For All Handicapped Children Act, Final Rules and Regulations for §121a.514 Surrogate Parents, published in the Federal Register, Vol. 42, No. 163--Tuesday, August 23, 1977.

Tennessee State Department of Education. Personal communication with Marion Parr, Director of Federal Programs, Nashville, Tennessee: State Department of Education, April 24, 1978.

Utah State Board of Education, "Amended Annual Program Plan for FY1978 under P.L. 94-142, Part B, Education for All Handicapped Children Act, July 7, 1977.